

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 BRANDON GREEN,
4 Plaintiff,

5 v.

6 CHARLES DANIELS, *et al.*,
7 Defendants.

Case No. 2:21-cv-00681-RFB-VCF

ORDER

8
9 **I. DISCUSSION**

10 On April 27, 2021, this Court denied the Plaintiff's application to proceed *in forma*
11 *pauperis* without prejudice because the application was incomplete and directed Plaintiff to
12 file a new fully complete application on or before June 28, 2021. (ECF No. 3). On June 1,
13 2021, Plaintiff filed a request for mandate asking the Court to issue a subpoena/order
14 mandating High Desert State Prison to issue a financial certificate and inmate account
15 statement for the previous six-month period to Plaintiff because he was having difficulty
16 obtaining these documents from prison officials. (ECF No. 4). Thereafter, on June 23,
17 2021, Plaintiff filed a second incomplete application to proceed *in forma pauperis*. (ECF
18 No. 5). Plaintiff's application at ECF No. 5 did not contain all three pages of the Court's
19 application form and contained a financial certificate and inmate account statement dated
20 December 15, 2020 because Plaintiff stated he was still not able to obtain the requested
21 current financial certificate and inmate account statement from prison officials.

22 Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to
23 commence a civil action may apply to proceed *in forma pauperis*, which allows the inmate
24 to file the civil action without prepaying the full \$402 filing fee. To apply for *in forma pauperis*
25 status, the inmate must submit all three of the following documents to the Court:

- 26 (1) a completed **Application to Proceed in Forma Pauperis for Inmate**, on this
27 Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on
28

1 page 3),

2 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
3 official (i.e. page 4 of this Court's approved form), and

4 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
5 **previous six-month period.**

6 The Court notes that it continues to receive timely financial documents in other cases
7 from High Desert State Prison. However, in the event Plaintiff is having difficulty obtaining
8 the required financial certificate and inmate account statement for the previous six-month
9 period from prison officials, Plaintiff shall file a declaration detailing when he requested the
10 documents, who he spoke to about the status of the documents, who he followed up with
11 after he did not receive the documents, and their responses. Plaintiff's declaration shall
12 include dates of his requests, dates of his follow-up requests, names of the prison officials
13 that he spoke to about the matter, and their responses. If Plaintiff's declaration
14 demonstrates that he has done all that was possible to acquire the documents from prison
15 officials, the Court will consider his application to proceed *in forma pauperis* complete.¹

16 Accordingly, the Court denies Plaintiff's request for mandate (ECF No. 4). Further,
17 Plaintiff's application to proceed *in forma pauperis* (ECF No. 5) is denied without prejudice
18 because the application is incomplete. The Court will grant Plaintiff a **one final extension**
19 until on or before **August 27, 2021** to file a fully complete application to proceed *in forma*
20 *pauperis* containing all three of the required documents or, alternatively, the first three
21 pages of the application to proceed *in forma pauperis* and a declaration detailing the efforts
22 he took to acquire the financial certificate and inmate account statement from prison
23 officials. Absent unusual circumstances, the Court will not grant any further extensions of
24 time. If Plaintiff does not file a fully complete application to proceed *in forma pauperis* with
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26 ¹ Plaintiff must still submit the first three pages of the application to proceed *in forma pauperis* on this
27 Court's approved form with his declaration. If Plaintiff does not submit the first three pages of the application
28 to proceed *in forma pauperis* with the declaration, this case will be subject to dismissal without prejudice for
Plaintiff to open a new case when he is able to acquire the required documents.

1 all three required documents or, alternatively, the first three pages of the application to
2 proceed *in forma pauperis* and a declaration detailing the efforts he took to acquire the
3 financial certificate and inmate account statement from prison officials on or before **August**
4 **27, 2021**, this case will be subject to dismissal without prejudice for Plaintiff to file a new
5 case with the Court when Plaintiff is able to acquire all three of the documents needed to
6 file a fully complete application to proceed *in forma pauperis* or, alternatively, the first three
7 pages of the application to proceed *in forma pauperis* and a declaration detailing the efforts
8 he took to acquire the financial certificate and inmate account statement from prison
9 officials.

10 A dismissal without prejudice means Plaintiff does not give up the right to refile the
11 case with the Court, under a new case number, when Plaintiff has all three documents
12 needed to submit with the application to proceed *in forma pauperis* or, alternatively, the first
13 three pages of the application to proceed *in forma pauperis* and a declaration detailing the
14 efforts he took to acquire the financial certificate and inmate account statement from prison
15 officials. Plaintiff may choose not to file an application to proceed *in forma pauperis* and
16 instead pay the full filing fee of \$402 on or before **August 27, 2021** to proceed with this
17 case.

18 The Court will retain Plaintiff's civil rights Complaint (ECF No. 1-1), but the Court will
19 not file the Complaint unless and until Plaintiff timely files a fully complete application to
20 proceed *in forma pauperis* with all three documents, or, alternatively, the first three pages
21 of the application to proceed *in forma pauperis* and a declaration detailing the efforts he
22 took to acquire the financial certificate and inmate account statement from prison officials,
23 or pays the full \$402 filing fee.

24 **II. CONCLUSION**

25 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff's request for
26 mandate (ECF No. 4) is denied.

27 IT IS FURTHER ORDERED that Plaintiff's application to proceed *in forma pauperis*
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1 (ECF No. 5) is denied without prejudice to file a new fully complete application to proceed
2 *in forma pauperis* with all three documents.

3 IT IS FURTHER ORDERED that the Clerk of the Court shall send Plaintiff the
4 approved form application to proceed *in forma pauperis* by an inmate, as well as the
5 document entitled information and instructions for filing an *in forma pauperis* application.

6 IT IS FURTHER ORDERED that on or before **August 27, 2021**, Plaintiff shall either
7 pay the full \$402 filing fee for a civil action (which includes the \$350 filing fee and the \$52
8 administrative fee) or file with the Court:

9 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
10 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
11 signatures on page 3),

12 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
13 official (i.e. page 4 of this Court's approved form), and

14 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
15 **previous six-month period.**

16 IT IS FURTHER ORDERED that if Plaintiff is not able to obtain his financial certificate
17 and inmate account statement from prison officials, Plaintiff shall file the first three pages
18 of the application to proceed *in forma pauperis* together with a declaration detailing the
19 efforts he took to acquire the financial certificate and inmate account statement from prison
20 officials.

21 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete application
22 to proceed *in forma pauperis* with all three documents, or, alternatively, the first three pages
23 of the application to proceed *in forma pauperis* and a declaration detailing the efforts he
24 took to acquire the financial certificate and inmate account statement from prison officials,
25 or pay the full \$402 filing fee for a civil action on or before **August 27, 2021**, this case will
26 be subject to dismissal without prejudice for Plaintiff to refile the case with the Court, under
27 a new case number, when Plaintiff has all three documents needed to file a complete
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1 application to proceed *in forma pauperis*.

2 IT IS FURTHER ORDERED that the Clerk of the Court shall retain Plaintiff's civil
3 rights Complaint (ECF No.1-1) but will not file it at this time.

4 DATED: 7-13-2021 _____



6 _____
UNITED STATES MAGISTRATE JUDGE